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## The Revival of Dowry Tradition

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**Abstract:** *The main purpose of this research is to revive a mild dowry –in cash– at the beginning of couple life in an Islamic way, with the support of proper legal laws and premarital counseling. The practice of the custom in imposing heavy dowries (marriage portions) pressures the man during divorce or sometimes it has caused a kind of jealousy and the creation of an unusual false competition in society. However, the solution is easy and depends on the real determination of the true believers. After the marriage contract is signed, based on a true commitment, man is obligated to pay his wife with consent or ask for a due date to pay the dowry at the first opportunity. Compulsory payment of a part of dowry at the beginning of a couple life or compulsory insurance of a part of Mahr in heavy dowries or the portions which are higher than allowed legal limit indicate the seriousness of this legal commitment to couples; these issues provide the access of women to their economic rights under peaceful conditions. It also motivates the couple to reduce the costly and unnecessary formalities of the marriage ceremony. In addition, it is obvious to anyone that this gift offering to women has always been used to motivate the family circle and increase the welfare of all the members, not a reserve for women's times of loneliness and need.*

**Keywords:** *Dowry (Mahr), Dowry Insurance, Women's Economic Rights*

### INTRODUCTION

According to the Islamic perspective and the manner of the Holy Prophet of Islam as well as the religious leaders, the revival of dowry is a mild payment, in cash, at the beginning of couple life. With the timely support of law and counseling before marriage, it is easy to convince and change the custom to the benefit of the young couples. In addition to solving the current problems regarding the dowry, a mild Mahr (dowry) may be a pleasure for the young couple to live in a new life, and the sweetness of this real sign of love or sentiment persist from the very first days of life in the sacred center of the family.

This article attempts to provide a realistic and effective solution to women's real rights, to facilitate marriage of young people by reducing formalities and address concerns about the economic weakness of women. Therefore, expressing the issue and philosophy of Mahr (dowry) from the legal point of view and its social functions confirm our claim on the necessity of the obligation of dowry and the right to claim it at the beginning of couple life.

The regulation of couples' financial relations, as some people think, are not exceptional to the financial obligations of the economic system. Undoubtedly, marriage is a non-financial and non-monetary contract, and despite its financial effects, the purpose of its conclusion is not to obtain material benefits (Mohammadi, 2008). However, in a situation where Mahr has actually lost its true function in securing the women's economic need,

it obtains a deviational function to compensate for the spiritual damage to the wife and to take revenge on the husband during intense process of divorces. On the other hand, a large number of supporters of a customary opinion, in conjunction with the male-dominated society, considering family survival as women's economic dependency on man and economic provision of women, not on economic independence (Discussion Series, 2001), has a tendency to uphold this religious legal right that the Qur'an has emphasized on:

(An-Nisa, verse 32)

For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of his bounty. Indeed, Allah is ever, of all things, Knowing.

Therefore, this difference in gender should not cause one of these two sexes to override others' rights. (Qera'ati, volume.3, p. 323).

It seems that the issue of dowry is in a false deadlock without the will to open its knots in the hope of non-binding moral rules-that is, the chivalry of men in the payment of Mahr and the discarding of women in terms of receiving it even in time of difference and separation. In this regard, the support of the law for the mild dowries- in cash- and free legal counseling offered to young couples in the early stages of life with the aim of familiarizing them with their actual obligations will be an effective and rapid way in the culture making and consistency of the costume with the legal rights and justice-centered ethics. As the terms of the marriage contract, significantly reduces the society's concern about the restriction of the right to divorce in women and the abuse of men in terms of infinite divorce rights.

#### **History of dowry and its definition**

Dowry is not an issue invented by Islamic laws, but before Islam, this issue existed among the various nations, including religious and non-religious nations; Islam has accepted it with a kind of amendments. (Sheikh Mofid, Risalah fi al-mehr., p. 4).

According to some declaring, the tradition of giving dowry is as old as marriage and has never been signed without it. (Sharaf al-Din, 2001). In ancient times, in some societies, the dowry was paid in the form of work and service of the groom for the bride's family during a certain period. The feature of the legal system of Islam in comparison with other legal systems is that while accepting the custom of dowry, it makes the bride the unconditional owner of the aforementioned portion and does not share it with the bride's family. (Bostan, 2004). In the definition of the dowry, it is said that it is the financial advantage that the woman owns through marriage, and the man is obliged to give it to the woman. (Safaei, Seyyed Emami, 1995). Any kind of commitment to having jobs is considered a property because it has a materialistic nature and can be determined as a dowry. (Katoozian, 1995). Besides the word of Mahr, other vocabularies such as Sedaq, Nehllah, Farizah, K'abins and etc have been used in the jurisprudential books. But Mahr is a term used more precisely in terms of jurists and among people. It can be spiritual, intellectual, and literary, such as the teaching of the Quran by man to woman (Sheikh Mofid: Risalah fi al-mahr, p. 4). Also, Mahr is defined as a property given to the woman by man because of the marriage contract and due to the social situation and the personality of the wife; it may be a solid property such as an apartment or some amount of gold or financial benefits such as rentals or benefits derived from work or personal services. The man is obliged to give the Mahr to his wife whenever she demands it, unless the due date for the payment has been settled by a time being said before; it is called muajjal.

This definition of the Mahr is included in the text of article 1091 of the Civil Code, which considers the amount of Mahr according to the condition of the woman: "In fixing of the reasonable dowry the status of the wife in respect of her family's station and other circumstances and peculiarities concerning her in comparison with her equals and relatives and also the customs of the locality, etcetera, must be considered". This definition is based on the viewpoint of the current custom of society and a firm support for the claim that everyone whose value and dignity is more than others should receive a gift in proportion to that peculiarities. Therefore, the girls' dowry should be determined on the basis of her hierarchical dignity and as these material criteria are more in a person, she will receive greater Mahr. With these definitions, how can we define the fixed Mahr or Mahr al saneh.

If we really accept that dowry is a gift from the husband to the woman, then the gift must be match the gift giver, or in the dignity of the family of the man who suits the woman. According to the customary definition of Mahr, more affluent people are more likely to be entitled to the greater Mahr, while middle or low-class girls suffer more from divorce and family disputes.

### **Theoretical framework**

By reviewing the theories of sociology and considering their overviews in explaining the issue of Mahr in Iran, it is realized that theories of functionalism and exchange (utilitarian theory) are more widely discussed. If the issue of Mahr is considered in terms of its definition and the concept that was common in the past, or if we are to seek to restore it to its original place, then we can explain it though functionalism theory well. According to the functionalism theory, each culture is an interconnected, single, and relatively coherent set that should be considered and explained as a whole. In explaining social reality, it is not enough to show its cause, but in most cases we must show the function of that reality in establishing the social organization.

This theoretical framework is consistent with the philosophy of the existence of Mahr as a factor in compensating for the reduction of economic activities of married women as a wife and mother engaged in domestic work. Although marriage and the family center have two-way interests for couples (Tabataba'i, 1996), the truth is that women's restrictions on economic business will be greater, especially after marriage. Therefore, the mahr in cash being available for women during marriage will compensate part of this economic weakness. In addition to the fact that the ownership of Mahr by the bride at the beginning of a couple life, in peace and happiness, causes women voluntarily have the power of sacrifice, investment and partnership with the husband to strengthen the family's economic framework. For example, in the purchase of the first couple house, women have volunteered to sell their gold and jewelry, although they have no shareholding in property or home. (Maghsoudi, 2011).

In addition, in the theory of the exchange, human beings are creatures who try to win benefits on one side and, on the other, to reduce their costs. As a result, all social relations are the exchanges that occur between the agents who incur costs to take advantage of each other and calculate the ratio of cost and benefit. (Turner, 1999).

When Mahr in practice departs from its original definition and provides a leverage to control the spouse and her interests or claims other rights during divorce, it loses its positive role in family and society and becomes a bail to maintain the apparent life of the wife or take control of husband. On the other hand, men also know well how to accept a heavy Mahr without taking it seriously to enter a marriage they don't deserve or to pressure the wife in the future to make her submit mahr while demanding for divorce. In such a system, a simple legal obligation rests with the rule of law and the Shariah, in such a way that payment of the Mahr is even given by the rich men to the time of the divorce or death; however, this happens rarely. Interestingly, in most of the researches, the issue of dowry has been treated in such a way that the commitment to heavy dowry being more than his financial power is allowed but the demand for Mahr by the woman even in the circumstances of her immediate need and the richness of the spouse is unethical and abnormal.

### **The Philosophy of the creation of Mahr**

Some lawyers have said about the philosophy of the existence of Mahr: "Mahr or dowry is given by men to women and it can partly compensate for the lack of women's share in her rights. In addition, Mahr, in the custom is a sign of honor and respect that a man holds for women. It is a manifestation of the husband's commitment to the life of a woman."

Sometimes the dowry, which is usually demanded when a marriage is running, prevents marital failure and guarantees marriage durability. In the event of a divorce, financially, which is attributed to a woman as a divorce, will prevent her distress and despair. "(Safa'i, 1995). In the event of a divorce, the property attributed to a woman as a dowry, prevents her from distress and despair. "(Safa'i, 1995). Others believe that the dowry or Mahr is the man's granting to his wife to satisfy her. (Sanei, Women's Message magazine, p. 51: p. 11-6).

Some have also considered it as a financial alternative (Mohaqeq Bahra'i, 1989; Mhageq Karki, 1991; Allameh Helli, 1999).

According to Martyr Motahari (peace be upon him), Mehr is an answer to the innate need of men and women: "it has been said that a man must consider something as Sedaq (Mahr) for his woman; this is based on the principle of honor, that is, a woman should introduce herself to the position showing the man that he needs her not vice versa and the man appears in a way that he has to give his woman something so that she may say yes to his proposal." (Motahhari, 1996).

In today's society, we see that women's feelings of concern for the future have led her to use her dowry as a device for the reduction of her vulnerability to gain more rights, and sometimes to utilize a pressure to control male tyranny. Some sociologists consider dowry as a guaranteeing device, while it does not have any enforcement but creates a sense of security in people. In addition, due to the possibility of divorce and the lack of social protection through the law or the creation of employment opportunities for a divorced woman, a married woman believes that only through high dowry can prevent divorce or provide for the period after divorce (Ezazi, 1997).

Ethical recommendations and orders in the manner of receiving Mahr and orders for forgiveness by women as a way to consolidate the foundation of the family, its legal status, such as neglect in determining the amount and referring it to each other, assigning its ownership to the woman for the purpose of receiving alimony on the part of the man, the establishment of it at the beginning of marriage, the lack of decency as opposed to transaction, etc. indicate that dowry having financial right is regarded as a gift (Yousefzadeh, 2005).

#### **The amount of dowry**

The Civil Code following the Islamic law for Imamieh jurisprudence does not specify the minimum and maximum; according to Article 1080 of the Civil Code: "fixing of the amount of dowry depends upon the mutual consent of the marrying parties." Some Shi'a scholars claim that the dowry is valid up to the amount of Mahr al Saneh which is the mahr of Hazrat Zahra's (PBUH) and the Prophet's women (500 Dirham), and the surplus is void. (Alam al-huda, Al-enthesar: p. 124).

The famous Shi'a scholars have considered the Mahr al Saneh to be bad and unpleasant (Mousavi Khomeini, Tahrir al-Vasilah, Vol.2, p. 29).

According to the scholars of jurisprudence, firstly, the reduction of the dowry is recommended, secondly, adding to the extent of Mahr al Saneh is not right (Helli, 1999).

The unpleasantness of heavy dowry is also considered by the ethics scholars, and some people, such as Al-Ghazali, have considered the dowry as a mean for insuring couple life and the proper life of couples. (Al-Ghazali, 1982, quoted by Saeedi, 2010).

In Surah An-Nisa, verse 20, an emphasis is placed on the fact that the dowry being mild or heavy is an obligation on men which cannot be dismissed on the pretext of being high or on the basis of immoral pretexts such as accusing the woman.

But if you want to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything. Would you take it in injustice and manifest sin?

And verse 21 of the Surah an-Nisa reaffirms the importance of this commitment as a "solemn covenant" strongly prohibiting men from doing so.

"And how could you take it while you have gone in unto each other and they have taken from you a solemn covenant?"

Although the Qur'an and tradition, Mahr or dowry, have sometimes been interpreted as Nahleh, it cannot be construed as merely a merciful agreement; that is because of the fact that Mahr is well-known because it is also called the award and Farizah, and these names clearly indicate the necessity of accuracy in the determination and calculation of dowry. Meanwhile, the custom does not have any mercy on the determination of the Mahr of Al-Masa'i. (Saeedi, 2009).

In the study of social factors related to the execution of dowry of newly married women in Shahrekord, researchers reported that the majority of girls wanted their Mahr before marriage at all ages. Therefore, the true basis of the custom does not infer the formality of the dowry and its amount or the lack of demanding Mahr i.e. the symbolic nature of the dowry, so it is not right for men to be convinced to accept high dowries without any resistance only because they believe they will deliver the portion when they are divorcing and assuming that this does not happen to them. On the other hand, reports show that individuals and families who ask for high dowries at the beginning of marriage have a greater incentive to claim it and enforce it at a time (Hadizadeh, 2010, quoted by Asadi Pour et al., 2010).

The solution for the heavy dowries in the trial is to reduce specified dowry or Mahr al-Masama – if not proportional to the potential power of the man to Mahr al-masal. What is the religious law of a person who accepts the dowry without the real intention of paying it?

Ayatollah Makarem Shirazi responds: "If it is in a way that concludes a sign of foolishness for the man, or a sign that he is not seriously intending to pay, then that covenant is null and is turned into mahr al-masal, that is, the woman's dowry is changed to be equivalent to a woman of the same rank in the same area and with the same conditions (Internet, Esteftaat, Ayatullah Makarem Shirazi). The criterion of the definition of the Mehr al-masal is to pay attention to the family situation and the special conditions of the wife, based on to the dowry of the people like her in the family; however, due to the prevalence of large dowries, this conversion also does not contribute to help the man, because sometimes mahr al masama is less than mehr-al masal. Or, in the case of mehr al mateh, with regard to the financial status of men, it is doubtful in case of rich men that the real woman's right in marriage in the name of mahr al0 mateh to be calculated more than the mahr al masal, while the legislator's intention was to reduce mehr al mosama.

The causes of the Increase in dowry in the present era Investigations show that the irrational increase in the amount of the dowry is a relatively new phenomenon and during 1958 to 1976, the amount of the portion has tripled (Yousefzadeh, 2005).

Some of its causes include the following items:

1. The problem of jealousy and boasting of the material values.
2. The increase in women's education and outdoor employment: The ability to play a variety of roles in the social arena and economic competition with men as a result of increasing women's awareness of their abilities and rights indicate their expectation to compensate for the economic losses caused by marriage; thus, asking for high dowries.
3. Social insurance: Since re-marriage is out of reach for women due to the social pressures in society, employment and other problems, some families consider high dowries as the only way possible to assure the life of women. Absence of full obtaining of rights for women is the indirect product of abandoning other legal requirements of women, including the right to ask for money for home service.
4. Deterrence of divorce and control of men. Muslim men can have more than one wife. Some believe that this factor, in addition to the unlimited right to divorce by men, makes the woman use the high dowry as a controlling and preventive leverage for men to maintain their couple life.
5. The prevalence of non-cousin marriages due to the lack of knowledge of the suitors, fears of the future and the weakening of public trust through to the loss of the traditional taboo of divorce. Hence; the feeling of insecurity in marital life decreases for women by high dowries.

Among the Turkmen of Iran, despite the relative stability in the amount of the dowry, the girls in rural or urban area, ask for high Mahr in conditions of marrying someone other than the men of their city or village. (Maghsoudi, 2011).

According to field studies on the operation of customary laws in the marriage of Turkmen in Iran, the tradition of the dowry, in cash, in this area is still common under customary law. So that a part of the dowry is paid to the father of the bride on the wedding day by the father of the groom, and the other part is given to the bride in the form of gold. The amount of the dowry in 35- to 40-year-old widows is usually two to three times the

portion of newly married brides. Also, if the groom has physical problems, the amount of bride's dowry is increased several times, or if the bride has problems or physical defects, the amount of paid dowry is reduced. In cases where the payment of the dowry is beyond the financial power of the groom's family, the dominant mother model is common (Maghsoudi, 2011).

#### **Negative functions of increasing dowries**

The society is faced with a lot of problems, considering the precocious sexual maturity in the society and the rising marriage age, social anomalies, creating personality crises, tendency towards unconventional relationships between girls and boys, depression and sexual disorders that also increase the backgrounds for committing sins. On the other hand, the existence of heavy dowries is not only a real guarantee of the natural preservation of family life, it may lead to compulsory tolerance of artificial life causing hostility in the family. Sometimes it makes the environment so intolerable that the woman voluntarily divests her dowry to save herself from the family prison (Mansour Nezhad, 2002).

The probability of tricky trading for girls who, after several marriages and divorces gain a lot of wealth after some years is rare but not unexpected. Considering the fact that registration of permanent marriage is compulsory, it is not easy to conceal previous marriages for girls who usually live with their families and in a permanent place.

#### **Factors influencing the demand for the dowries by women**

The main reason for claiming divorce and asking for its legal enforcement is the existence of differences between couples, and in the next stage, the financial need of the wife and then the spouse death. In all of these cases, the high amount of dowry, the social status of women in terms of occupation and educational level, social equality and having a children influence the demand for the dowry by women (Seyyed Mirzaii, 2009). Other factors affecting the legal demand for the dowry by women are the level of understanding between spouses, the degree of disorder in the woman's family, the level of acquaintance of the spouses, religious orientation, or diminished moral values.

The legal demand of the dowry by women and girls, which is observed today even during the engagement period, is becoming increasingly common. The most important problem is the unwillingness of boys to marry and the rising age of marriage, the proliferation of divorce, the increase in sexual anomalies, and so on. If it is accurately investigated, one of the main causes of the above problems is the related to the dowry. On the other hand, the increase in this phenomenon and its repetition in the community have caused the imprisonment of a lot of men. (Asadipour et al., 2012).

#### **Appropriate solutions for paying dowry**

Undoubtedly, the receiving of dowry is the right of a woman, and failure to pay in addition to the deprivation of women from her obvious right is not correct being regarded as a sin, because in the absence of payment of dowry, the dividing of the fortune is forbidden; that's because a part of that property is the right of the woman. The measures proposed in this regard are:

1. Determining the amount of dowry, the limit of moderation should be observed.
2. Putting the land (land, house, gold, etc.) as a dowry can prevent the decline of the value of the dowry over time.
3. Payment of the dowry at the beginning of the common life causes each person to determine the portion as much as he can. Because one of the causes of increase in the amount of the mahr is its credit manner.
4. Payment of the amount of the dowry as end-al-esteta'ah (whenever man has the power to pay it) can be a hindrance to the use of tricks by women (Yousefzadeh, 2005).

#### **Other suggested solutions are:**

The insurance of the dowry by the wife or receiving a part of the portion from the couple at the beginning of the couple life in exchange for the reduction of the formalities of the marriage ceremony.

Furthermore, compulsive insurance is considered for heavy dowries or those above the limit that the law determines. If the woman does not want to get a divorce or is not guilty of it, or the woman's dowry is less than

the amount specified by the law not being paid at the beginning of the couple life, this makes a part of the dowry be paid at the time of divorce by insurance.

It should be noted that divorce is the worst condition in which a woman presents her immediate economic need with the legal demand of a dowry. If a man is a dysfunctional person unable to pay a full dowry, he is legally required to pay it in monthly installments. Meanwhile, the insurance of dowry is considered as a hope for the woman to receive a portion of her Mahr at the time of her urgent need, because the couple's imprisonment to force him to pay the dowry during the couple life is not a good solution and won't be; it only causes hatred without the woman actually obtaining her financial rights. Therefore, the insurance of divorce is in favor of both the woman and the man during the divorce. Obviously, the woman's right to claim the dowry is not limited to the insured part, and whenever the man can afford it, the woman can claim the remainder of her dowry directly or through legal action. Other methods, such as voluntary insurance by the man leading to the payment of a large sum of money on a monthly or annual basis, has not been very effective and welcomed by the general public because in the current culture, men benefit from the indecisiveness state of the dowry; so they do not have an incentive to insure the dowry, especially for divorce; they prefer to divorce with the least expense. The suggestion of assigning tax on the dowry at the time of the conclusion of the marriage contract must be offered by wife. The custom and general practice of the society show that this approach is not very accurate. Because a group of women who want their dowry to be higher than the standard can determine the amount of mahr much higher than the standard limit, in which case the amount of the tax will be added to the pure dowry agreed upon. This policy also imposes taxes on their husbands as well. Another important point is that this suggestion is completely inconsistent with the spirit of law, because at the time of marriage money has not yet been exchanged as a dowry to consider tax on it. In fact, women sometimes have to pay taxes on dowries that they have not yet received, instead of receive their dowry immediately; this will make it more difficult for young people to marry. (Vaziri Fard and Fallah Tafti, 2013).

Regarding the reduction of the amount of dowry in a way that it is available to women, most researchers suggest to register the amount of the dowry as end-al-esteta'ah or at a certain time, and a certain amount being as much as the financial power of the man or guaranteed by another party. In cases where a heavy dowry is higher than the legal limit – being accepted by the man-, there must be a requirement to pay a portion of the mahr at the beginning of the couple life in order to prevent the acceptance of excessive and unrealistic amounts of the dowries. In addition, in order to reduce costly and unnecessary formalities in marriage, couples can be encouraged by free legal counseling and culture making to encourage them to pay the saved amount as a part of the dowry in exchange for a reduction in the cost of marriage. Because when someone has a big debt like a dowry, it's not fair and reasonable for him to make a mistake by unnecessary costs of the ceremony; this method of payment of the dowry at the very beginning of life is much more pleasing to both sides in this holy pact. In this way, Sedaq finds its original meaning, a gift that is associated with honesty. On the other hand, those who are wealthy and willingly give the dowry in cash to their wives, should be encouraged. On the other hand, if we encourage the refuse of getting the dowry or a part of it by the woman, we should keep in mind that this process is more beautiful after the certainty of the wife's ownership of her dowry. Although it is obvious for anyone that devoted women if they receive their dowry, will pay that for their family if needed, and if they do not need it, will be use it charitable works more than men. So worrying about the economic independence of Muslim women is an unnecessary concern, a false concern that the exclusion and ban of women from their indisputable rights to economic partnerships in the community is a consequence of it.

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